

Case No. CIV-21-0815-F

On December 28, 2021, Magistrate Judge Mitchell issued a Report and Recommendation, recommending dismissal of this action without prejudice. *See*, doc. no. 14, p. 1 and p. 5. Magistrate Judge Mitchell based the recommended ruling upon plaintiff's failure to follow the court's orders – specifically, his failure to timely pay the required initial filing fee -- relying upon Rule 41(b), Fed. R. Civ. P. *Id.*, pp. 3-4. However, the court notes that in the Report and Recommendation, Magistrate Judge Mitchell also recommended that the court dismiss the case without prejudice


unless plaintiff pays the \$107.88 within 21 days of any order adopting the Report and Recommendation. *Id.* at p. 4.

Although advised of his right to file an objection to the Report and Recommendation on or before January 18, 2022, and the consequences of his failure to make timely objection to the Report and Recommendation, namely, waiver of the right to appellate review of both factual and legal questions, plaintiff has not filed any objection to the Report and Recommendation. Plaintiff also has not sought additional time to file an objection.

With no objection to the Report and Recommendation, the court will adopt the Report and Recommendation. Because there appears to be two different recommended rulings by Magistrate Judge Mitchell, the court will accept the recommended ruling more favorable to plaintiff – the dismissal of the case without prejudice unless plaintiff pays the \$107.88 initial filing fee within 21 days of this order adopting the Report and Recommendation.

Accordingly, the Report and Recommendation of United States Magistrate Judge Suzanne Mitchell issued December 28, 2021 (doc. no. 14) is **ADOPTED** to the extent that this case will be dismissed without prejudice unless plaintiff Leellis Edwards pays the \$107.88 initial filing fee within 21 days from the date of this order. If plaintiff Leellis Edwards fails to pay the \$107.88 initial filing fee within 21 days of this order, this case will be dismissed without prejudice without further notice to plaintiff.

IT IS SO ORDERED this 2nd day of February, 2022.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE